Supreme Court, U.S.
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No. 95 - 1880

In the
Supreme Court of the United States

October Term, 1995

PFS CORPORATION,

Petitioner,

vs.

KENNETH B. TURNER, and
CHARLOTTE TURNER

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

RESPONDENTS' BRIEF IN OPPOSITION

JAMES H. STARNES
Counsel of Record for Respondents
LAW OFFICE OF JAMES H. STARNES
501 Title Building*300 North 21st Street
Birmingham, AL 35203
(205) 320-0800

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STATUTES AND REGULATIONS INVOLVED

42 U.S.C. §5409 (C):

> Compliance with any Federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law.

24 C.F.R. §3282.7 (x):

> Single "Manufactured home Safety " means performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur.

24 C.F.R. §3282.361:

> *General* (1) The DAPIA selected by manufacturer under §3282.203 shall be responsible for evaluating all manufactured home designs submitted to it by the manufacturer and for assuring that they conform to the standards...
>
> ....
>
> *Designs* (1) in evaluating designs for compliance with the standards the DAPIA will not allow any deviation from accepted engineering practice standards for design calculations or any deviations from accepted test standards except that the DAPIA, for good cause, may request the Secretary to accept innovations which are not yet accepted practices...

24 C.F.R. §3282.11:

> (a). No state manufacturered home standard regarding manufactured home construction and safety which covers aspects of manufactured homes governed by the Federal standards shall be established or continue in effect with respect to the manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.

24 C.F.R. §3282.203:

> ...
>
> (b) The manufacturer shall submit to the DAPIA information as the DAPIA may require in order to carry out the design approvals. This information shall, except where the manufacturer demonstrates to the DAPIA that it is not necessary, include the following:
>
> ...
>
> (2) Structural analysis and calculations, test data and/or other accepted engineering practices used by the manufacturer to validate the design,
>
> ...
>
> (11) Reports of all tests that were run to validate the conformance of the design to the standards.
>
> ...
>
> (d) Manufacturers may be required to furnish supplementary information to the DAPIA if the design information or the quality assurance manual is not complete or if any information is not in accordance with accepted engineering practice.

24 C.F.R. §3280.904(b)(9):

> (9) *Brake assemblies*. (i) the number, type, size and design of Brake assemblies required to assist the towing vehicle in providing effective control and stopping of the manufactured home shall be determined and documented by engineering analysis. Those alternatives listed in §3280.903(c) may be accepted in place of such an analysis.
> (ii) Brakes on the towing vehicle and the manufactured home shall be capable of assuring that that the maximum stopping distance from the initial velocity of 20 miles per hour does not exceed 40 feet (U.S. Department of Transportation Regulations).

24 C.F.R. §3280.903(c):

> (c) In place of an engineering analysis, either of the following may be accepted: (1) Documented technical data of suitable highway tests which were conducted to simulate transportation loads and conditions; or (2) acceptable documented evidence of actual transportation experience which meets the intent of this subpart.

HUD Interpretative Bulletin J-1-76:

> ...
> E. §280.904 (b)(9) - BRAKE ASSEMBLIES
> Unless substantiated in the design to the satisfaction of the approval agency by either engineering analysis or those alternatives listed in §3280.903(c)(1) and (2), there shall be a minimum of two axles equipped with brake assemblies on each mobile home floor or unit.
> ...

STATEMENT OF THE CASE

In its Petition, PFS Corporation ("PFS") misrepresents the claims of Respondents. The following is an accurate summary of the claims of Kenneth Turner:

1. In order for a manufacturer such as Mays Enterprises to sell and transport a mobile home within the United States, the mobile home must carry a HUD label.

2. A HUD label can only be affixed to the mobile home if the design is approved by a DAPIA, which in this case was PFS.

3. As DAPIA, PFS reviewed and approved the design of the mobile home in question to be in accordance with the HUD standards, including the design of the braking system which required only one braking axle.

4 The design of the mobile home did not comply with the HUD standards.

5. PFS was guilty of negligence and wantonness in approving the design of the mobile home.

In its Petition, PFS states that Turner is claiming: that HUD standards should have been "more strictly enforced"; that PFS should have required greater braking capacity; that Turner is attempting to hold PFS to the standard "different or higher than those set by HUD"; and that Turner is contending

that PFS should have redesigned the braking system of the mobile home. But as stated by the Court below:

> "... the claims are based on the theory that PFS corporation negligently and/or wantonly failed to comply with the federal HUD standards (Turner) does not attempt to place greater safety requirements upon PFS Corporation than those imposed under the federal regulations. Rather, his claims assert a failure to comply with the federal standards themselves."

Appendix to petition, page. D3. Any contrary statements or implications made by PFS in the Petition are absolutely false and misleading.

Turner was rendered a parapalygic in the accident made the basis of this suit. He was injured in 1987 and brought this action in 1989. The Federal statute and regulations provide him no remedy. His only remedy is under Alabama tort law.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO SPLIT IN AUTHORITY ON THE PREEMPTION ISSUE, EITHER IN THE FEDERAL COURTS OR THE STATE COURTS.

PFS contends that Turner's claims are preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5403(d) and the HUD regulation found at 24 C.F.R. §3282.11. In addition to the

Supreme Court of Alabama, three federal district courts and one state appellate court have considered preemption under the NMHCSSA and the HUD regulation. The holdings in these cases are consistent with each other and correct under the law, therefore there is absolutely no reason for the Supreme Court of the United States to speak on this issue.

In *Shorter v. Champion Home Builders Co.*, 776 F. Supp. 333 (N.D. Ohio, 1991), the plaintiffs claimed that the defendant mobile home manufacturer was negligent in failing to warn of dangerous levels of formaldehyde contained in their mobile home. The defendant contended that the state tort claims were preempted by the NMHCSSA. In holding that the state law claims were not preempted, the District Court noted that the purpose of the NMHCSSA was to reduce the number of injuries from manufactured home accidents and to improve the quality of mobile homes. The state law claims in no way frustrated the purpose of the Act and in fact were consistent with applicable provisions of the statute.

In *Woolridge v. Redman Homes, Inc.*, 792 F. Supp. 1469 (N.D. Tex., 1991), plaintiffs brought suit pursuant to the Texas Deceptive Trade Practices Act, claiming that the Defendants were liable for fraud, negligence, and unconscionable conduct. In ruling that there was no preemption, the Court found that the standards under Texas law were identical to the federal standards. Only state laws establishing construction or safety standards different from the federal standards were preempted.

Consistent with these holdings is the decision in *Mizner v. North River Homes, Inc.*, 913 S.W. 2d 23 (Mo. App. E.D., 1995). In that case, Plaintiff sued a mobile home manufacturer alleging negligence and strict liability associated with formaldehyde gas. The NMHCSSA and the HUD regulations expressly deal with acceptable levels of formaldehyde in mobile homes. The Missouri Court found no preemption of Missouri tort law. The Court pointed out that Congress expressly stated that its purpose in passing the NMHCSSA was "to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured homes from accidents and to improve the quality and durability of manufactured homes." 42 U.S.C. §5401. Missouri found that its common law was "in perfect accord with the Act's stated purpose to increase safety." Id. at 25.

The only case finding preemption is *Scurlock v. City of Lynn Haven, Fl.*, 858 F. 2d 1521 (11th Cir., 1988), where the Plaintiffs sued the City challenging a zoning ordinance. The ordinance excluded mobile homes that did not meet requirements of certain building codes or did not bear the seal of the Florida Dept. of Community Affairs. The Scurlocks' mobile home did not satisfy the requirements of the ordinance but did comply with the NMHCSSA and the HUD regulations. The Eleventh Circuit held that the City ordinance attempted to impose greater safety requirements for mobile homes than those imposed under Federal law and was therefore preempted. Unlike the Plaintiffs in *Shorter*, *Woolridge*, and *Mizner*, and unlike Kenneth Turner in the instant case, the City of Lynn Haven was attempting to enforce standards that differed from the HUD standards.

In sum, all Federal and State Courts that have spoken to the issue of preemption under NMHCSSA have ruled consistently. There is no conflict for this Court to reconcile and review should be denied.

II.
THE DECISION BELOW IS FULLY CONSISTENT WITH FEDERAL LAW.

Under §5403(d), State law "standards" are preempted only if they differ from the Federal standards. Turner is not in any way attempting to impose standards on PFS which differ from the Federal standards. Rather, Turner claims that PFS is liable because it failed to comply with the Federal standards. Importantly, §5409(c) of the Act expressly states that, if there is compliance with Federal standards, that does not "exempt any person from any liability under common law." (Emphasis added) A fortiori, there cannot be preemption where the claim is based on non-compliance with Federal standards.

As we have shown, Congress has spoken with clarity about the intended preemptive effect of the Act in both its express preemption provision - §5403(d) - and in its savings clause - §5409(c). This provides "a reliable indicium of congressional intent with respect to state authority," *Cipolloni v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992) (citation omitted), making resort to implied preemption principles unnecessary. In any event, implied conflict preemption has been found where it is "impossible for a private party to comply with both state and federal requirements," *English v. General Electric Co.*, 496 U.S. 72,

79 (1990), or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" *Hines v. Dabidowitz*, 312 U.S. 52, 67 (1941). There is no conflict whatsoever between the Alabama court's enforcement of common law and Federal Regulation of the mobile home industry. In fact, Congressional intent is served by holding entities governed by the federal scheme liable when such an entity fails to comply with the federal standards.

III.

EVEN IF TURNER WAS SEEKING TO IMPOSE ADDITIONAL DUTIES ON PFS, THE CLAIMS WOULD NOT BE PREEMPTED.

The Act's preemption provision expressly preempts state and local "standards," "rule," "regulation," and "action" which are not identical to the Federal standards or which "stand as an obstacle to this accomplishment and execution of the full purposes and objectives of Congress. "24 C.F.R. §3282.11(e). Turner is not seeking to hold PFS liable under any state or local standards, rule, regulations or actions.

Rather, Turner is claiming PFS is liable based on its failure to exercise reasonable care in fulfilling the duties imposed by the contract with Mays Enterprises. While the breach of duty claimed by Turner involves the failure of PFS desire to comply with HUD standards, the claim would still not be preempted if the common law of Alabama required more of PFS.

§5409(c) of the NMHCSSA expressly provides that "(c)ompliance with any Federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law." (Emphasis added) The word "standard" is a reference to state positive law, not common law damages actions. Cf. *Cipollone*, 505 U.S. at 518 (holding that the term "statement" refers only to state positive law, not damages actions, and noting that "[t]here is no general, inherent conflict between [express] federal pre-emption of state [regulatory] requirments and the continued vitality of state common law damages actions"). When this section of the Act is read along with §5043(d), it is clear that the Act "preempts state law standards, but (does) not preempt most state law claims." *Shorter v. Champion Home Builders Co.*, 776 F. Supp. at 337-38. This holding by the Texas District Court is nothing but logical. Why would congress include §5409(c) - the Act's broad savings provision - in the Act if it intended to preempt state law tort claims. See *Cipollone*, 505 U.S. at 518 (noting that the savings provision of the Comprehensive Smokeless Tobacco Health Education Act, 15 U.S.C. 4406 - whose wording is virtually identical to §5403(d) - broadly preserves damages actions); see also id. at 537 n. 2 (seperate opinion).

CONCLUSION

The writ of certiorari should be denied.

Respectfully Submitted,

JAMES H. STARNES
Counsel of Record for Respondents
LAW OFFICE OF JAMES H. STARNES
501 Title Building*300 North 21st Street
Birmingham, AL 35203
(205) 320-0800